Builders, Woodworkers & Millwrights, Local Union No. 1 (Glens Falls Contractors Association) ***and*** **Empire State Regional Council of Carpenters; United Brotherhood of Carpenters and Joiners of America, Local 229.** Case 3–CB–7986

DECISION AND ORDER

March 15, 2004

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND MEISBURG

On August 21, 2003, Administrative Law Judge Margaret M. Kern issued the attached decision. The Respondent Union and the Charging Party each filed exceptions and a supporting brief, as well as an answering brief. The General Counsel filed an answering brief to the Respondent Union's exceptions. The Respondent Union and the Charging Party each filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions,[2] and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board orders that the Respondent, Builders, Woodworkers & Millwrights, Local Union No. 1, its officers, agents, successors, and assigns, and/or representatives, shall take the action set forth in the recommended Order of the administrative law judge, as modified below.

Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. March 15, 2004

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT act as the collective-bargaining representative of employees employed by DLV, Inc., Pinchook &

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge made several inadvertent errors: she stated that Lanny J. Miller was an attorney; omitted "millwright work" in describing Charging Party Local 229's jurisdiction; referred to Miller at one point instead of Lloyd Martin; and suggested that a June 17, 2002 meeting attended by members of Local 229 was a membership meeting when the meeting actually was convened by "Local 229 Incorporated," an entity that owned the land underlying Local 229's union hall. We correct these inadvertent errors, which do not affect our decision.

[2] The judge concluded that the Respondent Union violated Sec. 8(b)(1)(A) and 8(b)(2) by accepting recognition from employer-members of the Glens Falls Contractors Association (GFCA), and entering with them into a collective-bargaining agreement containing a union-security clause, at a time when the employers already had recognized and were bound to a collective-bargaining agreement with the Charging Parties (Carpenters). The Carpenters contends that the judge, in making this finding, unnecessarily found that the GFCA-Carpenters relationship was an 8(f) relationship. We agree. Regardless of whether this may have been a 9(a) or 8(f) relationship, the GFCA employers were not free to unilaterally repudiate their agreement with the Carpenters and recognize the Respondent. See *Ana Colon, Inc.*, 266 NLRB 611, 613 (1983); *John Deklewa & Sons*, 282 NLRB 1375, 1385 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988); and *Precision Striping*, 284 NLRB 1110 (1987). Accordingly, we do not pass on the judge's finding regarding the nature of the GFCA-Carpenters relationship.

[3] We find merit in the General Counsel's request that the heading of the notice be changed from "Notice to Members" to "Notice to Employees and Members." See, e.g., *Communications Workers Local 11509 (AT&T)*, 283 NLRB 957, 959 (1987), enfd. mem. 841 F.2d 1128 (9th Cir. 1988). We shall modify the notice accordingly.

Buckley Construction, Inc., or Adirondack Mechanical Services, LLC, unless and until we have been certified by the Board pursuant to a Board-conducted representation election.

WE WILL NOT maintain, enforce, or give effect to the collective-bargaining agreement we entered with the Glen Falls Contractors Association on June 13, 2002, unless and until we have been certified by the Board pursuant to a Board-conducted representation election.

WE WILL NOT require employees employed by DLV, Inc., Pinchook & Buckley Construction, Inc., or Adirondack Mechanical Services, LLC, as a condition of their employment, to become or remain our members unless and until we have been certified by the Board pursuant to a Board-conducted representation election.

WE WILL NOT threaten employees with loss of employment opportunities if they fail or refuse to become our members.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

BUILDERS, WOODWORKERS & MILLWRIGHTS, LOCAL UNION NO. 1

Robert Ellison, Esq., for the General Counsel.
Edward Crumb, Esq., for the Respondent.
John Byington, Esq. (Meyer, Suozzi, English & Klein, P.C.), for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARGARET M. KERN, Administrative Law Judge. This case was tried before me on December 16 and 17, 2002,[1] in Albany, New York. The complaint, which issued on September 27, 2002, was based upon an unfair labor practice charge and an amended charge filed on August 1 and September 20 by the Empire State Regional Council of Carpenters (Regional Council), and by the United Brotherhood of Carpenters and Joiners of America, Local 229 (Local 229) (collectively the Charging Party), against Builders, Woodworkers & Millwrights, Local Union No. 1 (Local 1 or Respondent).

FINDINGS OF FACT

I. JURISDICTION

The Glens Falls Contractors Association (GFCA) is an organization composed of various employers engaged in the construction industry, and one of the purposes of the GFCA is to represent its employer-members in negotiating and administering collective-bargaining agreements with various unions, including the Regional Council. Adirondack Mechanical Services, LLC (Adirondack) is a general contractor in the construction industry performing millwright work in the Ballston Spa, New York area. It is also a member of the GFCA. Annually, Adirondack purchases and receives at its Ballston Spa, New York facility goods and materials valued in excess of $50,000 directly from points located outside the State of New York.

Respondent admits, and I find, that at all material times Adirondack has been an employer-member of the GFCA and engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent further admits, and I find, that the GFCA, by virtue of its employer-member Adirondack being engaged in commerce, has also been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act. Respondent further admits, and I find, that the Regional Council is a labor organization within the meaning of Section 2(5) of the Act.

III. THE FACTS

A. Collective-Bargaining History

1. The parties

DLV Inc. and Pinchook & Buckley Construction, Inc. have been employer-members of the GFCA since the 1980's. Lawrence Thayer is the owner of DLV, and Stephen Pinchook is the owner of Pinchook & Buckley. Adirondack became a member of the GFCA in March, and Randy Edgerly is the owner of Adirondack. Philip Allen was the business representative for Local 229 and he was involved in negotiations on behalf of Local 229 from 1974 until May. He is presently the principal representative of Respondent Local 1.

2. The 1995–1998 agreement

The GFCA and Local 229 were party to a collective-bargaining agreement effective May 1, 1995 to April 30, 1998. That agreement contained the following language:

> Inasmuch as the Union has submitted proof and the Employer is satisfied that the Union represents a majority of its employees in the bargaining unit described herein, the Employer recognizes the Union, pursuant to Section 9(a) of the National Labor Relations Act, as the exclusive collective bargaining agent for all employees with that bargaining unit, on all present and future jobsites within the jurisdiction of the Union, unless and until such time as the Union loses its status as the employee's exclusive representative as a result of an NLRB election requested by the employees. Notwithstanding the aforementioned, the Union acknowledges that the Employer shall have no continuing obligation to bargain for any successor agreement beyond the 30th day following the expiration of this collective bargaining agreement. The Employer agrees that it will not request an NLRB election.

The agreement also contained the following provisions that drew a distinction between GFCA member-employers and non-GFCA signatories:

[1] All dates are in 2002 unless otherwise indicated.

> *Non-Association Employers* – Inasmuch as the Union has submitted proof and the Employer is satisfied that the Union represents a majority of its employees in the bargaining unit described herein, the Employer recognizes the Union, pursuant to Section 9(a) of the National Labor Relations Act, as the exclusive collective bargaining agent for all employees with that bargaining unit, on all present and future jobsites with the jurisdiction of the Union, unless and until such time as the Union loses its status as the employees exclusive representative as a result of an NLRB election requested by the employees. The Employer agrees that it will not request an NLRB election.
>
> *Glens Falls Contractors Association* – All firms which are members of Glens Falls Contractors Association and are parties to the Glens Falls Contractors Association and United Brotherhood of Carpenters & Joiners of America Local 229 building agreement, or have designated to Glens Falls Contractors Association bargaining rights for United Brotherhood of Carpenters & Joiners of America Local 229 building agreement will be covered by Glens Falls Contractors Association recognition policy for the United Brotherhood of Carpenters & Joiners of America Local 229.

Allen testified that at no time did any employer-member of the GFCA request, nor did Local 229 ever present proof of majority status. It was the understanding of the parties that employer-members of the GFCA could "get out" of its agreement with Local 229 once 30 days had elapsed following expiration of the agreement. Out-of-town contractors who signed an agreement with Local 229, however, were considered to have extended 9(a) recognition. The rationale for the different treatment, according to Allen, was that he and the employer-members of the GFCA knew and trusted one another, and he did not have that same relationship with out-of-town contractors.

Pinchook's testified that in 1995, the GFCA sought exemption from the 9(a) language and was successful.

3. The 1998–1999 agreement

John Simmons is the assistant to the executive secretary-treasurer of the Regional Council. Simmons testified that in 1998, he participated in the negotiations between Local 229 and the GFCA for the successor agreement to the 1995–1998 agreement. The new agreement was for [a] 13-month term, from May 1, 1998 to May 31, 1999, and contained the same recognitional language as appeared in the 1995–1998 agreement.

4. The 1999–2002 master agreement

In 1999, negotiations for an agreement to succeed the 1998–1999 agreement were conducted on a broader scale. The Regional Council negotiated on behalf of six local unions, including Local 229, with seven multiemployer associations, including the GFCA. Attorney Lanny Miller represented the GFCA at these negotiations. The geographic area covered by the agreement extended to 21 counties in upstate New York, referred to as the "upper 21 counties." The parties attempted to incorporate the terms of seven preexisting local agreements into one master contract, but agreement could not be reached on all issues. They agreed to certain uniform language that became articles 1 through 20 and applied to all parties to the agreement. Those terms and conditions of the preexisting local agreements that did not conflict with articles 1 through 20, or with a document referred to as the final management proposal, were incorporated in a series of appendices. Local 229's jurisdiction was set out in article 9, Section 2 of the Local 229 appendix:

> Carpenters and joiners, railroad carpenters, bench hands, stair builders, furniture workers, shipwright and boat builders, reed and rattan workers, ship carpenters, joiners and caulkers, cabinet makers, casket and coffin makers, box makers, bridge, dock, and wharf carpenters, car builders, floor layers, underpinners and timbermen, shorers and house movers, loggers, lumber and sawmill workers, and all those engaged in the running of wood-working machinery, or engaged as helpers to any of the above divisions or sub-divisions.

Simmons testified there was specific discussion about the 9(a) recognitional language that had been contained in the 1995–1998 and 1998–1999 local agreements between Local 229 and the GFCA. According to Simmons, members of the management team thought it was illegal for out-of-town contractors working within Local 229's jurisdiction to be bound to a 9(a) agreement with Local 229, but not employer-members of the GFCA. In the final management proposal, Lloyd Martin, chief spokesperson for the associations, wrote to Simmons on this issue:

> NLRA Section 9(a) provisions in GRCA/Local 229 Agreement must be removed because: An Employer who becomes bound to a NLRA Section 9(a) agreement gives up virtually forever its right to end its obligation to bargain with the local union at the end of the labor agreement. In short, the Employer is solidly welded to the local union in perpetuity . . . The provisions in GRCA/229 only exempt members of the GFCA or those who designate bargaining rights to GFCA from the 9(a) labor agreement. These provisions collectively, if they were to remain in a Regional Agreement, would require all Employers signatory to the Regional Agreement to become members of the GFCA or designate bargaining rights to GFCA to avoid the 9(a) provisions binding them to Local 229 alone in perpetuity . . . These provisions, if they were to remain in a Regional Agreement, violate equitable treatment by placing the relationship of one Association and one Local Union above that of the Regional Council and the Associations . . . This is discriminatory and unacceptable in a Regional Agreement.

Simmons testified that he and other members of the Regional Council's negotiating committee consulted with their attorneys, and the union attorneys agreed with the position articulated by Miller. Simmons advised Allen that those out-of-town contractors who had previously signed agreements with Local 229 that contained 9(a) language would continue to be bound by that language, but that going forward, no new out-of-town contractors would be able to sign an agreement with 9(a) language.

The 1999–2002 master agreement was effective June 1, 1999 to May 31, 2002, and Miller executed the agreement on behalf of the GFCA. There was no reference in articles 1 through 20 to

the type of recognition extended to the Regional Council or its constituent locals. The 9(a) language that had appeared in the previous agreements between Local 229 and the GFCA was omitted from the Local 229 appendix.

Pinchook's recollection of the 1999 negotiations was that he and the other members of the GFCA "wanted to further clarify that we were exempt and we asked for a mutual understanding that we were not subject to the 9(a) language."

The 2002 Negotiations

In January, Thayer spoke with the other employer-members of the GFCA and with Allen about the 1999–2002 Master Agreement set to expire on May 31. At Allen's direction, Thayer sent an undated letter, on GFCA letterhead, to John Fuchs, executive secretary-treasurer of the Regional Council, with copies to Pinchook and Allen. In that letter, Thayer asked Fuchs to contact him to schedule a meeting to begin negotiations for a new agreement.

On or about April 30, Thayer, Pinchook, and Edgerly[2] had a luncheon meeting with attorney Lanny Miller and asked him to represent them in the upcoming negotiations. Pinchook testified that Allen was also present. Following the meeting, Thayer sent a confirming letter to Miller designating him as the GFCA's authorized representative.

On May 15, Miller called Thayer and asked him for an additional copy of Thayer's April 30 letter designating him as the GFCA's representative. He also asked Thayer to provide him with a listing of the members of the GFCA. That same day, Thayer sent a fax to Miller, with copies to Pinchook and Edgerly, advising him that the members of the GFCA were DLV, Pinchook & Buckley, and Adirondack.

Patrick Morin is a regional director for the Regional Council. Morin testified that at the outset of the 2002 negotiations, he asked each employer association representative to provide a list of the employers they represented. Miller told Morin he represented the GFCA and gave him a copy of Thayer's May 15 fax. Four bargaining sessions ensued and Morin and Simmons attended every session. Both testified that Miller was also present at every bargaining session and at no time did Miller indicate that there were limitations on his authority to bargain on behalf of the GFCA. Miller did not testify.

Thayer testified that after each bargaining session, Miller faxed to the GFCA a written report on the progress of each session. Thayer said he, Pinchook, and Edgerly discussed these reports and relayed their views back to Miller.

On May 30, the parties reached a final agreement. Those present in the room, which included Miller, read aloud from their notes and affirmatively indicated their agreement. Since the final session had been ongoing for many hours, it was agreed that Simmons and Martin would remain to sign a two-page memorandum of understanding, and that the other representatives could leave. It was further agreed that the agreement would later be circulated for the necessary signatures. Miller was present when these arrangements were discussed and voiced no objection. The new memorandum of agreement was effective June 1, 2002 to May 31, 2006.

According to Thayer, on May 31, Miller faxed to him the memorandum of understanding bearing the signatures of Martin and Simmons. Thayer discussed the memorandum with the other members of the GFCA. By letter dated June 3, Thayer wrote to Miller:

> In our April 30, 2002 letter you were designated as our authorized representative for negotiations with Carpenters' Local #229. We have reviewed the draft of the proposed "Memorandum of Understanding—'Master Agreement' " effective June 1, 2002 and we are not satisfied with some of its provisions. We wish to emphasize that you were authorized to negotiate the Agreement but not to sign any Agreement on our behalf without further authorization from us.

C. The Formation of Local 1

On May 7, in the midst of the 2002 negotiations, Fuchs removed Allen as Regional Council representative for Local 229, and ousted him from the negotiations. This was apparently the culmination of a long-standing disagreement between Allen and the Regional Council. Briefly stated, the dispute centered around the Regional Council's formation of a new local, Local 1163, with jurisdiction over all millwright work. Allen testified that Local 229 had always been a mixed local of carpenters and millwrights, and the creation of Local 1163 would strip Local 229 of its millwright jurisdiction, something he vehemently opposed.

On May 30 and May 31, Allen distributed withdrawal forms to members of Local 229, as well as authorization cards for Local 1, a new union that he had formed. On June 11, attorney Edward Crumb sent a letter to the GFCA on behalf of Local 1 seeking voluntary recognition. Crumb included authorization cards with the letter and wrote that the cards, "should clearly demonstrate to [the GFCA] that the Union now represents either all or an overwhelming majority of those carpentry and millwright employees currently employed by the three companies on whose behalf your Association bargains collectively." Thayer testified that enclosed with Crumb's letter were authorization cards signed by 17 of his 20 employees. Also enclosed was a proposed collective bargaining agreement.

Thayer, Pinchook and Edgerly met on two or three occasions in early June. Thayer shared the fact that 17 out of 20 of his employees had signed cards for Local 1, and Pinchook reported that one of his two employees had also signed a card for Local 1. According to Pinchook, Edgerly had "paperwork" with him regarding his employees' Local 1 membership but he did not see it.[3] Pinchook testified it was clear to all three employers that a majority of their respective employees had designated Local 1 as their collective-bargaining representative. On June 13, Thayer, Pinchook, and Edgerly signed a collective-bargaining agreement with Local 1 on behalf of their respective companies. The bargaining unit covered by the Local 1 agreement is defined in article 2, section (a):

[2] By this time, Edgerly and his company Adirondack had joined the GFCA.

[3] Edgerly was not asked if any of his employees signed cards for Local 1.

> Builders, carpenters and joiners, millwrights, bench hands, stair builders, wood, wire, and metal lathers, acoustic and dry wall applicators, floor layers and floor coverers, tile, marble, and terrazzo workers and finishers, furniture workers, cabinet makers, casket and coffin makers, box makers, reed and rattan workers, bridge, dock and wharf carpenters, divers and tenders, welders, shipwright and boat builders, ship carpenters, joiners and caulkers, railroad carpenters, car builders, pile drivers, underpinners and timbermen, shorers and house movers, loggers, lumber and sawmill workers, and all those engaged in the running of woodworking machinery of any type, or engaged as helpers or tenders to any of the above categories or sub-categories of employment.

Article 2, Section (c) sets forth the following recognitional language:

> The Employer agrees that, upon presentation of sufficient evidence of the Union's majority status amongst employees in the bargaining unit described herein, the Employer will voluntarily recognize [Local 1] as the sole and exclusive bargaining agent of its employees pursuant to Section 9(a) of the National Labor Relations Act for all employees within the bargaining unit described herein on all present and future job sites within the jurisdiction of the Union during the term of this Working Agreement.

Article 4, section (a) sets forth an 8-day union security clause. Thayer testified that from June 13 until sometime in September when a Board settlement agreement was reached with the Regional Council, he withheld dues from employees' paychecks under the Local 1 agreement. He never remitted those dues to Local 1, however, and following the settlement agreement the dues were paid over to the Regional Council.

D. June 17 meeting

On June 17, Allen convened a meeting of the Local 229 membership. Allen testified the purpose of the meeting was to discuss the International's attempt to remove millwright work from Local 229's jurisdiction, to take over the property and offices of Local 229, and to control the Local 229 pension fund.

Andrew Templeton has been a member of Local 229 for 16 years. After the meeting was over, he stayed to speak with Allen. He asked Allen what his intention was in creating Local 1. He wanted to know if Allen was serious about Local 1, or if he was he just trying to make a point with the International. According to Templeton, Allen said he had already signed a number of contractors including the three contractors in the GFCA. He said he was also going to Utica to speak to someone about extending Local 1's jurisdiction to that area. Allen said he had brought the guys in from Glens Falls and that the "cream of the crop" had signed with him. He then said, "If you don't sign with Local 1 you won't work in this area." Templeton said that didn't sound so good. Allen asked if Templeton was working now and Templeton said no. Allen then added, "well we're not looking to get anybody hurt, so I am not going to, you know, ask you to sign with me now." Allen denied making these statements to Templeton.

James Rivette testified that he and Allen are very good friends and that he fully supported Allen's creation of Local 1. According to Rivette, he was in Allen's presence for the entire evening of June 17, save perhaps a few minutes here and there to go to the bathroom or to get a drink. Rivette heard Local 229 members asking Allen if they should join Local 1, stay with Local 229, or go with Local 1163. Rivette heard Allen tell each member they should do what was best for them. He also heard Allen say that he had some contractors already signed up and he was working on signing up more. Rivette denied hearing Allen tell Templeton, or anyone else, that if they did not sign up with Local 1 they would not work again in the Glens Falls area. On cross-examination, Rivette was asked if there could have been a private conversation between Templeton and Allen, and Rivette responded, "To my knowledge no, but that's not the gospel either. There could have been, you know, but I didn't see it, no."

IV. ANALYSIS

A. The 2002 Negotiations

On April 30, the three GFCA employers met with Miller and asked him to represent them in negotiations as he had done in the previous round of negotiations in 1999. That same day, Thayer sent Miller a letter stating, "we hereby designate you (Lanny J. Miller) as our authorized representative." Miller presented a fax from Thayer to the Regional Council stating unequivocally and without limitation that Miller represented the three employer members of the GFCA. Miller attended all of the negotiation sessions, and was present on May 30 when the final agreement was reached. Throughout this period, he was held out as the GFCA's bargaining agent with full bargaining authority, and at no time prior to May 30 did anyone on behalf of the GFCA do anything to alter that perception. The evidence therefore firmly establishes Miller had actual and apparent authority to negotiate and to reach an agreement on behalf of the GFCA, and I so find. *Allegany Aggregates, Inc.*, 311 NLRB 1165 (1993).

I further find, based on the credible testimony of Simmons and Morin, that a full and complete agreement was reached on May 30 and that all that remained after that date was for copies of the agreement to be circulated to the parties for signature. It was too late for Thayer to write on May 31, the day after an agreement was reached, that Miller had been authorized to negotiate, but not to sign an agreement. As stated by the Trial Examiner in *Aptos Seascape Corp.*, 194 NLRB 540, 544 (1971):

> Stated otherwise, an agent appointed to negotiate a collective bargaining contract is deemed to have apparent authority to bind his principal in the absence of notice to the contrary . . . the rule, which imposes no hardship on the principal, is dictated by the statutory policy of promoting industrial peace by encouraging collective bargaining. Clearly, the statutory policy would be thwarted by permitting a principal, after his agent has reached agreement, to state for the first time that the latter's authority was limited . . .

The obligation of parties to sign a written agreement encompassing the terms agreed to during collective bargaining has long been recognized. *H.J. Heinz Co. v. NLRB*, 311 U.S. 514, 525–526 (1941). That there was a delay in getting the typewrit-

ten document circulated to all the representatives for signature did not relieve the GFCA from its obligation to execute the agreement once it was received,[4] nor did it alter the fact that the GFCA was bound to the terms of the 2002–2006 memorandum of agreement as of May 30.

B. The nature of the relationship between the GFCA and the Regional Council/Local 229: Section 9(a) versus Section 8(f)

Having established that the GFCA was bound to the terms of the 2002–2006 memorandum of agreement as of May 30, the question is whether the relationship between the GFCA and the Regional Council/Local 229 was rooted in Section 9(a) or Section 8(f). I conclude that this relationship has been, at all times relevant to this case, an 8(f) relationship.

The GFCA is composed of employers engaged in the construction industry and its relationship with the Regional Council and Local 229 is, in the absence of evidence to the contrary, presumed to be an 8(f) relationship rather than a Section 9(a) relationship. The burden of proving the existence of a 9(a) relationship is on the party asserting that such a relationship exists, in this case, counsel for the General Counsel. *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988); *H.Y. Floors*, 331 NLRB 304 (2000).

A 9(a) relationship may be established in one of two ways, either through a Board-certified election, or through an employer's voluntary grant of recognition. *J & R Tile, Inc.*, 291 NLRB 1034, 1036 fn. 11 (1988). To satisfy the voluntary recognition option, the party asserting the 9(a) relationship must unequivocally show that (1) the Union requested recognition as the majority or Section 9(a) bargaining representative of the unit employees; (2) the employer recognized the Union as the majority or Section 9(a) bargaining representative; and (3) the employer's recognition was based on the Union's having shown, or having offered to show, evidence of its majority support. These requirements may be established by the written agreement of the parties. *Central Illinois Construction*, 335 NLRB 717, 721 (2001). It is not necessary for the written agreement to refer explicitly to Section 9(a), provided the agreement conclusively notifies the parties that a 9(a) relationship is intended. *Nova Plumbing, Inc.*, 336 NLRB 633, 637 (2001). To the extent that there is any ambiguity on the point, it is proper to consider extrinsic evidence. *Central Illinois*, id. at fn. 15.

In the 1995–1998 and 1998–1999 agreements, Local 229 and the GFCA drew a distinction between the type of recognition extended by the employer-members of the GFCA and the type of recognition extended by non-GFCA signatories. The first sentence of the recognitional language for both categories of employers was identical and stated that Section 9(a) recognition was being granted. However, in the case of the GFCA employers, a second, limiting sentence was inserted. In that second sentence, the parties agreed that notwithstanding the first sentence, GFCA employers had no obligation to bargain with the union beyond the 30th day following expiration of the agreement. This additional language is inconsistent with the statutory scheme of Section 9(a) which provides a union with a continuing presumption of majority status after contract expiration, and one not limited to 30 days. Based upon the presence of this additional, limiting language, I find the GFCA employers did not recognize Local 229 as the Section 9(a) representative of their employees. To the extent that there is ambiguity on this point, however, there is ample extrinsic evidence in the record to establish that it was never the intention of the GFCA employers to extend Section 9(a) recognition to Local 229.

Allen testified that it was always the understanding of the parties that the GFCA employers could "get out" of its agreement with Local 229 once 30 days had elapsed after the expiration of the agreement. Pinchook's recollection was that in 1995, the GFCA sought exemption from the 9(a) language and was successful, and that the point was reiterated during the 1999 negotiations when there was "a mutual understanding that we were not subject to the 9(a) language." In management's final proposal in 1999, the associations' chief negotiator wrote, "the provisions in GFCA/229 only exempt members of the GFCA or those who designate bargaining rights to GFCA from the 9(a) labor agreement," and Simmons testified that the Regional Council agreed with this assessment. The 9(a) language that appeared in the 1995–1998 and 1998–1999 agreements did not appear in 1999–2002 master agreement, or in the Local 229 appendix to that agreement. Nor did 9(a) language appear in the 2002–2006 memorandum of agreement. Based upon all of these facts, I find counsel for the General Counsel has failed to prove that either Local 229 or the Regional Council was, at any time material to this case, the Section 9(a) representative of the employer-members of the GFCA as alleged in paragraph VII(c) of the complaint. The relationship between the employer-members of the GFCA and Local 229 and the Regional Council is, and has been, an 8(f) relationship.[5]

C. The Relationship between GFCA and Local 1

Respondent maintains that the GFCA extended 9(a) as opposed to 8(f) recognition to Local 1 on June 13. I find it unnecessary to reach this issue since the question is whether the GFCA could lawfully extend any type of recognition to Local 1 at a time when it was bound to the terms of an 8(f) agreement with the Regional Council and Local 229.

[4] The testimony at the hearing was that a Board settlement was reached with the members of the GFCA in September and that since at least that time, the GFCA employers have been living up to the terms of the 2002–2006 memorandum of agreement. It is not clear from the record when the memorandum of agreement was actually executed by the members of the GFCA.

[5] In October 2001, Adirondack executed a copy of an agreement between the Regional Council and the Construction Contractors Association of the Hudson Valley, Inc. which agreement covered the "lower 9 counties" of New York State. The Charging Party points to 9(a) language that appears in that agreement to bolster its argument that the GFCA extended 9(a) recognition to Local 229. Adirondack was not a member of the GFCA when it executed the Construction Contractors Association agreement, and the agreement covers a different geographic area than is covered by Local 229 and the GFCA. The terms of that agreement are therefore not relevant to the complaint allegations that center on the relationship among the GFCA, the Regional Council, Local 229, and Local 1.

On June 13, 2 weeks after the employer-members of the GFCA became bound to the 2002–2006 memorandum of agreement, they signed a collective-bargaining agreement with Local 1 covering the same employees. Respondent offers the following five-step analysis in defense of that recognition: first, Respondent argues the relationship between the GFCA and the Regional Council/Local 229 was an 8(f) relationship; second, that following the expiration of the 1999–2002 Master Agreement, the GFCA was free to repudiate its relationship with the Regional Council/Local 229; third, the GFCA was not bound to the results of the association-wide bargaining that culminated in an agreement on May 30 because its agent had only limited bargaining authority; fourth, that even if the GFCA was bound to the agreement reached on May 30, because it was an 8(f) agreement it was voidable during its term; and fifth, the GFCA was free to extend 9(a) recognition to Local 1 upon a showing of majority support.

I agree with Respondent's position that the relationship between the GFCA and the Regional Council/Local 229 is, and has been, an 8(f) relationship, and that the GFCA's recognition of Local 1 occurred after the expiration of the 1999–2002 Master Agreement. It is not true, however, that the GFCA was not bound to the agreement reached by the parties on May 30. For the reasons already stated, a full and complete agreement for a successor collective-bargaining agreement was reached on that date and the GFCA was bound to that agreement. Respondent's next argument, that even if there was an 8(f) agreement in effect as of May 30 it was voidable during its term, is plainly without merit and Respondent's reliance on pre-*Deklewa* cases in support of this argument is in error. Under *Deklewa*, an 8(f) agreement may not be repudiated during its term.

Having dispensed with the first four arguments raised by Respondent, the final issue is whether a construction industry employer can, during the term of an 8(f) agreement, extend recognition to a different union for the same employees. I conclude that it cannot under the principles of *Deklewa*.

In *Deklewa*, the Board enunciated four principles applicable in 8(f) cases: (1) a collective-bargaining agreement permitted by Section 8(f) shall be enforceable through the mechanisms of Section 8(a)(5) and Section 8(b)(3); (2) such agreements will not bar the processing of valid petitions filed pursuant to Section 9(c) and Section 9(e); (3) in processing such petitions, the appropriate unit normally will be the single employer's employees covered by the agreement; and (4) upon the expiration of such agreements, the signatory union will enjoy no presumption of majority status, and either party may repudiate the 8(f) bargaining relationship. *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988). An 8(f) contract can only be repudiated during its term through the Board's election processes. Id. at 1385 fn. 45. A construction industry employer who is party to an 8(f) agreement may not, therefore, during the term of that agreement, extend voluntary recognition to a second union for the same bargaining unit of employees, regardless of whether that recognition is pursuant to 8(f) or 9(a), absent a Board-conducted election. Compare, *Precision Striping, Inc.*, 284 NLRB 1110, 1112 (1987) (employer's repudiation of 8(f) agreement following a secret ballot poll of its unit employees, who voted overwhelmingly against union representation, violated Section 8(a)(5)). Given these principles, Respondent's acceptance of recognition from the GFCA employers as the collective-bargaining representative of employees who were already represented by another union, and covered by the terms of an Section 8(f) agreement, violated Section 8(b)(1)(A) of the Act. Respondent further violated Section 8(b)(2) of the Act by entering into a collective-bargaining agreement with the GFCA employers that contained a union security clause. *Stockton Door Co.*, 218 NLRB 1053, 1055 (1975), enfd. 547 F.2d 489 (9th Cir. 1976), cert. denied 434 U.S. 834 (1977).

D. Allen's June 17 threat

I credit the testimony of Templeton that on June 17, Allen told him that if he did not become a member of Local 1 he would not work in the Glens Falls area, and I do so for several reasons. First, Templeton was a credible witness and Allen was not. Templeton testified in a straightforward, responsive manner, and cross-examination failed to elicit any reason for him to fabricate his testimony. Allen, on the other hand, had much at stake in this case and his testimony was an uncompromising attempt to advance the interests of Respondent Local 1.

Several examples of Allen's lack of credibility can be readily discerned from the record. First, Respondent took the position in this case that the relationship between the GFCA and Local 1 is a 9(a) relationship. In a pretrial affidavit, however, Allen made the statement that it was a "conditional 9(a) relationship." When asked on cross-examination what he meant by the term "conditional 9(a) relationship," Allen said he did not know. In another example, Pinchook testified, without contradiction, that Allen was present at the luncheon meeting on April 30 when Miller was retained by the GFCA to represent its members in negotiations. When Allen was asked about his knowledge of the extent of Miller's authority to negotiate on behalf of the GFCA, he became confused and contradictory. He testified that he first discussed the purported limits on Miller's authority with the members of the GFCA on or about May 30 when the memorandum of understanding was reached. He then changed his testimony and said that he first discussed this with them in early May, when negotiations were beginning. He then changed his testimony again and said this topic was first discussed on June 17, after he and the GFCA had already executed the Local 1 agreement. The actual and apparent authority of Miller to negotiate on behalf of the GFCA is a central issue in this case, and Allen's unwillingness to testify in a forthright manner on this issue leads me to discredit him as a witness.

Second, I do not rely on Rivette's testimony that he did not witness Allen threatening Templeton. Rivette admitted that it was possible that this conversation took place out of his presence.

Finally, that Allen made the statement attributed to him by Templeton is consistent with the other evidence in the case. At the time of the June 17 meeting, there was, to say the least, bad blood between Allen and the Carpenters' Union. Allen had been physically ousted from the negotiations between the Regional Council and the associations in early May, and as soon as it became clear that an agreement had been reached between

the parties on May 30, Allen immediately began soliciting employees to withdraw from membership in Local 229 and to join the newly formed Local 1. By the time of the June 17 meeting, Allen had a signed collective-bargaining agreement with the three employer-members of the GFCA and that agreement contained a union-security clause. Thus, when Templeton asked Allen if he was serious about Local 1, it was entirely logical that Allen told him that he had already signed up the three contractors in the Glens Falls area, and that if Templeton wanted to work in the Glens Falls area, he would have to sign up with Local 1 as well. In essence, Allen was conveying that there was a union security clause in the Local 1 agreement and that if Templeton went to work for a GFCA employer, Allen intended to enforce that clause.

For all of these reasons, I credit the testimony of Templeton and I find that on June 17, Allen threatened Templeton with loss of employment if he did not become a member of Local 1. Allen's statement violated Section 8(b)(1)(A) of the Act.

CONCLUSIONS OF LAW

1. Adirondack Mechanical Services, LLC is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Glens Falls Contractors Association, by virtue of its employer-member Adirondack Mechanical Services, LLC, is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Builders, Woodworkers & Millwrights, Local Union No. 1 is a labor organization within the meaning of Section 2(5) of the Act.

3. The Empire State Regional Council of Carpenters is a labor organization within the meaning of Section 2(5) of the Act.

4. On June 13, 2002, Respondent violated Section 8(b)(1)(A) and 8(b)(2) of the Act by accepting recognition as the collective-bargaining representative of employees employed by DLV, Inc., Pinchook & Buckley Construction, Inc., and Adirondack Mechanical Services, Inc. at a time when those employees were already represented for the purposes of collective-bargaining by the Empire State Regional Council of Carpenters, and by entering into a collective-bargaining agreement with these employers that contained a union-security clause.

5. On June 17, 2002, Respondent, by Philip Allen, violated Section 8(b)(1)(A) of the Act by threatening an employee with loss of employment if the employee did not become a member of Builders, Woodworkers & Millwrights, Local Union No. 1.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.[6]

[6] The evidence indicates that Respondent did not receive dues as a result of enforcement of the unlawful union-security clause. Nor has counsel for the General Counsel requested that employees be reimbursed for dues paid to Respondent. I therefore have not included a provision for a make-whole remedy.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Respondent, Builders, Woodworkers & Millwrights, Local Union No. 1, South Glens Falls, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Acting as the collective-bargaining representative of employees employed by DLV, Inc., Pinchook & Buckley Construction, Inc., and Adirondack Mechanical Services, LLC unless and until it has been certified by the Board pursuant to a Board-conducted representation election.

(b) Maintaining, enforcing, or giving effect to the collective-bargaining agreement entered into with the Glens Falls Contractors Association on June 13, 2002, unless and until it has been certified by the Board pursuant to a Board-conducted representation election.

(c) Requiring that employees employed by DLV, Inc., Pinchook & Buckley Construction, Inc., and Adirondack Mechanical Services, LLC, as a condition of employment, become or remain members of Builders, Woodworkers & Millwrights, Local Union No. 1, unless and until it has been certified by the Board pursuant to a Board-conducted representation election.

(d) Threatening employees with loss of employment opportunities if they fail or refuse to become members of Builders, Woodworkers & Millwrights, Local Union No. 1.

(e) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its union office in South Glens Falls, New York, or wherever else located, copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed its offices, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by DLV, Inc.,

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Pinchook & Buckley Construction, Inc., and Adirondack Mechanical Services, LLC, at any time since June 13, 2002.

(b) Sign and return to the Regional Director sufficient copies of the notice for posting by DLV, Inc., Pinchook & Buckley Construction, Inc., and Adirondack Mechanical Services, LLC, if willing, at all places where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 21, 2003

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT act as the collective-bargaining representative of employees employed by DLV, Inc., Pinchook & Buckley Construction, Inc., or Adirondack Mechanical Services, LLC unless and until we have been certified by the Board pursuant to a Board-conducted representation election;

WE WILL NOT maintain, enforce, or give effect to the collective-bargaining agreement entered into between us and the Glens Falls Contractors Association on June 13, 2002, unless and until we have been certified by the Board pursuant to a Board-conducted representation election;

WE WILL NOT require employees employed by DLV, Inc., Pinchook & Buckley Construction, Inc., or Adirondack Mechanical Services, LLC, as a condition of their employment, to become or remain our members unless and until we have been certified by the Board pursuant to a Board-conducted representation election;

WE WILL NOT threaten employees with loss of employment opportunities if they fail or refuse to become our members.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

BUILDERS, WOODWORKERS & MILLWRIGHTS,
LOCAL UNION NO. 1